

Application No. 10/814,749
Reply to Restriction Requirement dated: November 22, 2005
Election/Restriction Requirement dated: August 22, 2005

REMARKS

The Examiner has issued a restriction requirement stating that the application claims four separate inventions. Specifically, the Examiner identifies the four inventions as being:

- I. Claims 1-2, 4-7, 10-33 and 48-50, drawn to a pharmaceutical composition comprising particles wherein the particles bind a greater amount of anion with the shell material than without, classified in class 424, subclass 489+.
- II. Claims 3, 4, 8-33, 47 and 50, drawn to a pharmaceutical composition comprising particles wherein the particles bind a greater amount of cation with the shell material than without, classified in class 424, subclass 489+.
- III. Claims 34-40, drawn to a method of treatment comprising administering particles, classified in class 514, subclass 1+.
- IV. Claims 41-46, drawn to a method of removing phosphate comprising administering particles that bind phosphate, classified in class 514, subclass 941.

Pursuant to 37 C.F.R. §1.142, Applicants elect Group II (pharmaceutical compositions comprising cation-binding core-shell particles) as amended claims 3, 4, 14, 15, 18-22, 29, 30 and 51-70.

The Examiner also required Applicants to elect a single disclosed species of the claimed invention. Accordingly, Applicants elect the following species – core component: cross-linked cation-exchange polymer comprising acidic functional group (e.g., cross-linked polystyrene sulfonate – Dowex) and shell component: cross-linked vinylic polymer (e.g., polyvinyl pyrrolidone).

Applicants reserve the right pursuant to 37 C.F.R. §1.141 to pursue claims to the non-elected species or subgenus in this application in the event that a generic claim is found to be allowable. Applicants also reserve the right pursuant to 35 U.S.C. §121 to file one or more divisional applications directed to the non-elected inventions, species or subgenus during the pendency of the present application.

Applicants traverse the restriction of Group III (methods of treatment using compositions of Group II) as amended claims 34, 36, and 40. Under MPEP §803, if the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

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Applicants acknowledge that the inventions defined by independent claims 3 and 53 and claims depending therefrom (each of Group II, directed toward pharmaceutical compositions) are patentably distinct from the inventions defined by claim 34 and claims depending therefrom (each of Group III, directed toward methods of treatment). Applicants respectfully submit, however, that examination of all of the presently pending claims could be made without serious burden on the Examiner.

A substantial overlap in claim requirements exists between the elected and non-elected claims. In particular, claim 34 (Group III) is dependent upon independent claims 3 and 53 (each of Group II). As such, each of the non-elected Group III claims include all of the requirements of the independent Group II claims from which they depend.

In view of such overlap of claim requirements, the search for the elected claims will necessarily include and overlap with the search for the non-elected claims. Therefore, all of the presently pending claims could be searched without an undue burden on the Examiner.

Accordingly, reconsideration of the restriction of Group III claims is respectfully requested.

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CONCLUSION

Applicants earnestly believe that the application is in condition for allowance and respectfully solicit the Examiner to expedite prosecution of this patent application to issuance. Should the Examiner have any questions, the Examiner is encouraged to telephone the undersigned.

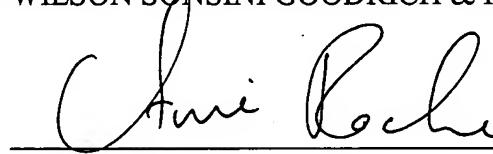
The Commissioner is authorized to charge any additional fees that may be required, including petition fees and extension of time fees, or credit any overpayment to Deposit Account No. 23-2415 (Docket No. 29329-715.201).

Respectfully submitted,

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